

**A Summary of Views  
and Changes  
to the  
Draft Health Care Protection Regulation**



September 28, 2000

## Introduction

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In July 2000, a proposed set of new regulations that apply to the provision of surgical services was sent to a wide range of health care stakeholders for review and comment. The proposed regulations are an essential component of Alberta's new *Health Care Protection Act*, passed in the spring of 2000. When the new regulations are approved and implemented, it will mark the first time contracts for insured surgical services between health authorities and operators of surgical facilities are regulated by clear government rules.

The proposed regulations were written using a process that allowed for consultation in two phases of their development. In phase one, Alberta Health and Wellness sought the input of the health authorities, the College of Physicians and Surgeons and the Alberta Dental Association regarding the policies and content that would guide preparation of the proposed regulations.

In the second phase, the complete set of proposed regulations was sent to organizations representing consumers, doctors, nurses, health authorities, accredited surgical facilities and other health care stakeholders. Alberta Health and Wellness offered to conduct technical briefings to review the proposed content of the regulations and to answer questions. A number of stakeholder groups attended these meetings.

In total, thirty-eight responses were received from stakeholders representing the organizations shown in the chart. Although the timelines for responding were short, many stakeholders submitted comprehensive responses and comments on the draft regulation. A list of stakeholders who responded appears in the Appendix.

### ***Stakeholder Responses by Category***

|                                               |           |
|-----------------------------------------------|-----------|
| <i>Health Authorities</i>                     | <i>10</i> |
| <i>Colleges and Professional Associations</i> | <i>4</i>  |
| <i>Other Stakeholder Groups</i>               | <i>4</i>  |
| <i>Unions – joint response</i>                | <i>5</i>  |
| <i>Surgical Facilities</i>                    | <i>9</i>  |
| <i>Public</i>                                 | <i>6</i>  |

|                               |                  |
|-------------------------------|------------------|
| <b><i>Total Responses</i></b> | <b><i>38</i></b> |
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The following provides an overview of the Health Care Protection Regulation, key comments and suggestions received as part of the consultations, and the major changes made to the proposed regulation.

## Overview to the Health Care Protection Regulation

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The overview to the Health Care Protection Regulation provides a summary and context for the key themes and comments received from stakeholders. The regulation will be available on the Alberta Health and Wellness website.

- Section 1, Interpretation, defines terms used later in the regulation.

- Sections 2 and 3 define major and minor surgical services provided by dentists. Major surgical services must be provided in a public hospital, while minor surgical procedures that may be safely performed in a dentist's office are outside the scope of the Act. With respect to the physician services, the College of Physicians and Surgeons of Alberta has the authority to define major and minor surgical services in its bylaws.
- Sections 4 to 10 deal with the sale of enhanced medical goods or services by public hospitals and operators of surgical facilities. These sections specify when the patient must be informed, the content of the disclosure form, requirements for keeping related records, how a patient can change his or her mind regarding a purchase, requirements for making refunds, and maximum charges for enhanced medical goods or services.
- Section 11 on accommodation charges will apply to facilities providing insured surgical services that require more than a 12-hour stay. Charges are allowed for a private or semi-private room only if the patient requests it and agrees to the charges in writing.
- Sections 12 to 14 deal with the Minister's authority to make changes to designations of surgical facilities, and the way notice must be given to operators of these facilities.
- Sections 15 to 17 specify the information that operators of surgical facilities providing insured surgical services are required to submit to health authorities in their periodic and annual performance reports, and when reporting significant mishaps.
- Sections 18 and 19 describe what information is required to obtain Ministerial approval for transfer of an agreement for the provision of insured surgical services, or for a change of ownership of a surgical facility providing these services.
- Section 20 deals with the publication of ownership information relating to surgical facilities designated under the Act.
- Section 21 relates to the establishment and appointment of members to the Premier's Advisory Council on Health.
- Section 22 identifies that contravention of certain sections or sub-sections related to the sale of enhanced medical goods or services or provision of preferred accommodation is an offence and specifies the penalties.
- Sections 23 to 25 are required to enact the regulation and deal with the coming into force and expiry of the regulation.
- Two schedules are included in the regulation. One lists insured surgical services provided by dentists that are considered to be minor procedures. The other lists the astigmatic or multi-focal lens that is sometimes used in cataract surgery as the only enhanced medical good. No enhanced medical services are listed.

## Key Themes and Comments

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### General Comments

- *Several organizations said their comments on the regulations should not be implied as support for the Health Care Protection Act.*

A number of organizations, including the Friends of Medicare, a coalition of five unions, and Opposition MLAs made specific comments and suggestions on the regulations, but made it clear that their concerns were primarily with the Act itself. Many of the comments by these organizations echoed their concerns with the Act, including implications of the North America Free Trade Agreement (NAFTA), foreign ownership, sale of enhanced goods or services, conflicts of interest, and lack of protection for health care workers.

These matters received full discussion during the 3000 minutes of debate on the *Health Care Protection Act* in the Legislature. This is the most time devoted to debate on a single piece of legislation in the history of the Alberta legislature. The Act was passed May 10, 2000 with 14 amendments.

- *Timelines were a concern for some organizations.*

Several individuals and organizations expressed concerns about the short timelines for responding to the proposed regulations. They suggested a more extensive process, possibly including broad public consultations.

- *Some organizations raised concerns that are beyond the scope of the regulations.*

The Act sets out 19 areas where the Lieutenant Governor in Council may make regulations. A number of organizations made specific suggestions that go beyond the scope of those 19 areas. For example, several suggested that the process for adding items to the list of enhanced goods and services should be described in regulations. Others said there should be more detailed requirements for monitoring and inspecting surgical facilities, addressing conflicts of interest, or involving a range of professional organizations in setting standards for accrediting surgical facilities.

These are beyond the scope of the regulations, but can be addressed as part of the ongoing implementation of the new legislation.

### Comments on the Regulation

- Most comments focused on protecting consumers, clearly defining major and minor surgeries, and reporting requirements.
- *Major and minor surgeries* – Some suggested that the definitions of major and minor surgery performed by physicians should be set in regulations rather than in bylaws of the

College of Physicians and Surgeons. Others said that the "intermediate" dental surgeries should be defined in the regulations. Some specific technical changes were suggested by professional organizations.

- **Health authorities and some operators of surgical facilities raised concerns about the administrative burden associated with the consumer protection provisions** – The proposed regulations set out detailed requirements for informing patients when selling an enhanced medical good or service and obtaining the patient's written consent. There were some comments that the cost of administration may be higher than the actual cost of providing enhanced medical goods.

Suggestions were made to reduce the administrative burden, to simplify the disclosure form so patients would understand what's involved, to remove the ability to offer enhanced goods or services in emergency situations, and to change the timelines involved.

- **Sale of enhanced medical goods or services** – Comments were made about clarifying the authority to limit charges for the sale of enhanced medical goods to items listed on a Schedule to the Regulation, determining costs and overhead, and the process for reviewing and making changes to the list of enhanced goods.
- **Charges for preferred accommodation** – One respondent suggested that the charges for semi-private and private rooms in surgical facilities should be the same as charges in hospitals.
- **Amending and reinstating designations** – Suggestions for changes included requiring withdrawal of a designation if expectations for performance are not met or the public system is adversely affected, publishing any changes in designation, and requiring the Minister to make decisions within a set period of time.
- **Reporting requirements** – Some respondents suggested that the reporting requirements for surgical facilities were not extensive enough, while others suggested they were too onerous. Other comments related to timelines for meeting the requirements, publishing reports, including more information on the sale of enhanced goods and services, and defining and reporting "significant mishaps." Some concerns were expressed about apparently not requiring surgical facilities to provide certain reports until April 2001.

Health authorities also asked for additional time to implement some of the reporting requirements. Concerns were also expressed about the undue burden that reporting requirements will place on surgical facilities providing very few insured services.

- **Transfers and change of ownership** – Some suggested restrictions on foreign ownership, clear criteria to guide the Minister's decisions, and specific timelines for decisions. Some operators expressed concerns about the potential impact on their business decisions of requiring Ministerial approval for changes of ownership. There was also a suggestion for full disclosure of ownership structure and ties with other business entities.

- **Premier's Advisory Council on Health** – Suggested changes included putting the detailed mandate in regulations, specifying the organizations that should be represented on the Council, limiting the Premier's discretion to choose members, and establishing a public selection process.
- **Offences and penalties** – Several respondents suggested that failing to comply with reporting requirements should be an offence. Others suggested there should be minimum penalties or that successful prosecution should lead to an automatic review of the designation or accreditation of a surgical facility.
- **Review of regulations** – Some respondents suggested that the regulations should be reviewed sooner than five years after their enactment.
- **Schedule of enhanced medical goods or services** – A few suggestions were made for additions to the list of enhanced goods, including two items that may be used in cataract surgery. In addition, questions were raised about various goods currently sold as outpatient supplies in hospitals. The major concern was not with the list itself but with how changes would be made to the list in future.

## Changes to Regulations

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As a result of specific suggestions and comments received through the consultation process, a number of important adjustments have been made to the Health Care Protection Regulation.

- Section 1, Interpretation, definitions of the terms "minor child" and "spouse" were included for purposes of determining changes in ownership of surgical facilities.
- Section 2, Major Surgical Services, which applies to procedures provided by a dentist, was revised to ensure consistent rules are in place for surgical procedures performed under general anaesthetic on a patient under 18 months old. In these cases, the surgery must be done in a hospital.
- A number of changes were made to Sections 4 to 10 respecting the sale of enhanced medical goods or services.
  - Surgical facilities and hospitals will not be allowed to sell enhanced medical goods or services in emergency situations.
  - Patients must be informed at least 72 hours before surgery.
  - Surgical facilities and hospitals will be prevented from charging for enhanced medical goods and services unless they are listed on Schedule 2 of the Regulation.

- Fibreglass casts have been removed from the schedule of enhanced medical goods or services and will now be considered a standard item provided to patients at no charge. Only the astigmatic and multi-focal lenses appear on the list.
- Detailed requirements on the disclosure form for the sale of enhanced goods have been simplified, while ensuring patients will be fully informed before purchasing an enhanced medical good or service. The disclosure form must include statements in plain English to inform the client of rights and obligations rather than quotations from the Act and Regulation.
- The form must also show how the charges for the enhanced medical good or service have been calculated.
- The section on refunds includes a new provision to allow recovery of refunds from operators by the Minister and repayment to patients.
- The provision for record keeping allows for more flexibility as to the form and manner of records storage.
- Section 11 requires that a patient receiving an insured surgical service cannot be charged for private or semi-private accommodations if the patient's medical condition requires it.
- In Section 12, the Minister is now required to make decisions respecting amendments to an approved agreement within 30 days of receiving all the relevant information. It also makes clear that the Minister will use the factors contained in Section 15 of the Act in reviewing changes to proposals from facilities for the provision of uninsured surgical services.
- In Sections 15 to 17 surgical facilities will be required to report immediately on the data specified in the regulation using existing reporting systems. As originally proposed, health authorities and operators of surgical facilities are expected to fully implement the ambulatory care reporting system by April 2001. The other changes made to these sections are:
  - Surgical facilities will be required to report on the number of each enhanced medical good or service sold.
  - Annual reports from surgical facilities must be submitted within 60 days of the anniversary date of the agreement between the operator and health authority.
  - These annual performance reports from surgical facilities will be made public.
  - Health authorities must receive full reports of mishaps occurring in contracted surgical facilities, while the Minister must receive a notice of mishaps occurring in any designated surgical facility. The content of a notification has been specified.
- Section 20 is new and requires that the details of ownership of surgical facilities be reported and made public.

- Section 22 is more specific in identifying sections where contravention is an offence.
- Section 23 repeals the interim periodic reporting requirement on April 1, 2001.

## Other Actions to Address Stakeholder Input

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Proclamation of the *Health Care Protection Act* and enactment of the Regulation mark a major milestone in the Government's Six Point Plan for Health. Nevertheless, it does not mean that the work to implement the Act and Regulation and to respond to stakeholder feedback has come to an end.

Alberta Health and Wellness will continue to work with health authorities and others to ensure full implementation of the ambulatory care reporting system and to monitor compliance with the legislation. The College of Physicians and Surgeons will be developing standards for surgical facilities providing overnight stays and will involve other professional bodies in its process.

In addition, Alberta Health and Wellness will initiate a review of charges for out-patient supplies and implement an improved process for determining whether medical goods or services are deemed enhanced. Two possible enhancements were identified by surgical facility operators for consideration: capsular tension rings and use of a YAG laser for cataract surgery. These will be thoroughly examined through the new review process.

**APPENDIX**  
**STAKEHOLDERS RESPONDING TO THE CONSULTATION**  
**ON THE DRAFT HEALTH CARE PROTECTION REGULATION**

**Health Authorities**

- Headwaters
- Calgary
- David Thompson
- East Central
- Capital
- Lakeland
- Mistahia
- Northern Lights
- Alberta Cancer Board
- Alberta Mental Health Board

**Colleges and Professional Associations**

- College of Physicians and Surgeons of Alberta
- Alberta Dental Association
- Alberta Medical Association
- Alberta Association of Registered Nurses

**Other Stakeholder Groups**

- Consumers' Association of Canada
- Calgary Chamber of Commerce
- Friends of Medicare
- Office of the Privacy Commissioner

**Unions**

- United Nurses of Alberta
- Alberta Union of Public Employees
- Alberta Federation of Labour
- Canadian Union of Public Employees
- Health Sciences Association of Alberta

**Operators/Medical  
Directors of Surgical Facilities**

- Mitchell Surgi-Centre
- Gimbel Eye Centre
- Royce L.C. Johnson Professional Corporation
- South Edmonton Oral Surgery
- Vincelli & Skulsky Surgical Facility
- Plastic & Cosmetic Laser Surgical Centre
- Alberta Eye Institute Inc.
- Buski Eye Center & Surgical Suite
- John W. Conley Professional Corporation

**Public**

- Sherwood Park Constituency Town Hall Meeting
- Two Opposition M.L.A.s
- Three members of the public